O/Contract/52

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File No. 11/52

Legal Department

BRANCH

Subject:—

P-10
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Opinion on the

Indian Contract Act 1952

O/Contract/52

File No. 11/52

Gen. 194 e.

CONTENTS

Legal Department File No. O. Contract/1952.

Sr. No.	R.I/	O.No.	Subject	Pages
			Opinion on the Indian Contract Act.	
1.		G-48 4-2-52	Questions(1)Whether the period of two years for which the security bond and the surety bond of Shri G.V. Potnis, and V.R.Potnis respectively can be enforced for recovery of the loss of Rs.3407-2-10 incurred by Govt. would run from the date of discharge, viz., 26-9-49 or from 18-2-50, i.e., the date onwhich the order of discharge was communicated to Shri Potnis and(ii)if the period runs from 26-9-49,whether Govt. can modify the order of discharge so as to make it effective on 18-2-50, with a view to extending the period of enforcibility of the bond.	1-8
2.		14834 11-9-52	Question whether the recovery can be effected by coercive processes from Shri Chandratre and his surety in terms of the surety bond for Rs-1000/- dated the 2-3-1949and also whether a civil suit will be tenable if coercive measures fail.	9-12
3.		G-423 5-9-52	Question Re: filing of the a suit against Shri V.R.Potnis for the recovery of the whole of the amount.	13-14
4.		G-612 12-11-52	Question whether the financial Advisor and Addl.Secy.to Govt,C.S.D. can execute contracts on behalf of the Govt. of Bombay.	15-18

CONTENTS.

Sr. No.	R.I./-	O.No.	Subject	Pages
5.		G-516 7-1252	Question whether M/s. Shah construction and M/s. Indian construction Co. are legally entitled to claim compensation from Govt. for the damages caused to the works under construction due to cyclone.	19-24
6.		G-646 26-11-52	R.L.A.'s opinion No.14018. dated 5-122- 1949.- Question whether it would be possible to withhold the commission which has become due to Shri Manubhai under the the terms of the agency as contained in the State Textile Controller's letter No.P.T.C./B.Y. dated 17.10.49	25-30
7.		G-711 24-12-52	R.L.A.'s opinion No.G-646, dated 26.11.52- Question whether a suit would be defensible.	31-34

P.W. 2417

NIL 2417

Office of the R. J. A

Even though the order of discharge from service was passed by the District Magistrate, Kolaba on the 26th September 1949, the Mahalkari of Murud was asked to relieve Shri Potnis after getting all the Godown work completed by him. The order on the face of it is not one which can be construed as coming into force on the date of its issue. In fact Shri Karnik who took over as Godown keeper from Shri Potnis on the 21st September 1949 from which date Shri Potnis was suspended, failed to communicate the orders of discharge till the 18th February 1950 and therefore subsistence allowance was paid to Shri Potnis till that date. The date of termination of Shri Potnis's service will have to be taken as 18th February 1950 and not26th September 1949 as subsistence allowance is paid to a person during suspension only and not after discharge(vide Rule 151B.C.S:Rs). The two years mentioned in the bondshould therefore be computed from the 18th February 1950. Action can therefore be taken against Shri Potnis and his surety till the 17th February 1952.

Sd/-
2-2

Remembrancer of Legal Affairs.

M.R.D.
16-7-56
C.4

U.R.to C.S.D.No.H- 48,dated the 4th February 1952 .

The Commissioner could have extended the 2 years' period in the surety bond before the expiry of that period. As the two years have already elaped since the termination of Shri Chandratreya's services, the Commissioner cannot now extend the period of the bond.

There is no provision in the bond that the moneys due could be recovered as an arrear of land revenue. Even if the provision was there it would have been operative only for a period of two years from date of discharge from service. Recovery by coercivemeasures is not legally possible in this case.

As regards filing of a civil suit to recover the amount, attention is invited to R.L.A.'s opinion No.C-423 dated the 5th September 1952. As advised therein no suit can be filed against the surety or the godown keeper after the lapse of 2 years on the basis of the bond passed by him and only agst a suit against the godown keeper would lie under the general law, which may be filed if he is solvent.

Sd/-
9-9
Remembrancer of Legal Affairs.

M.R.D.
17-7-56
C.4

U.R to C.S.D., No. 14834,dated the 11th September 1952.

Office of the R.L.A.

In R.L.A.'s opinion No. G-48,dated the 4th February 1952 it was clearly stated that action should be taken in the matter before the two years period had expired on the 17th February 1952. But no action seems to have been taken. An inquiry may by held as to why no action was taken in time, so as to avodd all difficulty.

The two years xperiod referred to in the bond has now expired. Hence no suit nan be filed against the surety on the basis of the bond passed by him. But the defaulter continues to be liable under the general law, and a suit may be filed against him, as asson as possible, for recovering the whole of the amount.

Sd/-
4/9

Remembrancer of Legal Affairs.

M.R.D.
17-6-56
C.4

U.R.to C.S.D. No.,G-423,dated the 5th September 1952.

Office of the R.L.A.

Entry 12-A of the G.R.,H.D.,No. 1758/S,dated the 26th January 1950(as amended by G.R.,H.D., No.1858/6,dated 21-8-1952)mentions, inter alia, the Secretary, Civil Supplies Dpeamrtment and the Director of Civil Supplies as the officers who can execute contracts on behalf of Government of Bombay. It is true that the Financial Advisor and the Additional Secretary,Civil Supplies Department was formerely designated as the Director of Civil Supplies (Accounts). But since he is no longer Director of Civil Supplies(Accounts) he would not be able to execute contracts as a Director of Civil Supplies. A Secretary does not include an Additional Secretary. Therefore it would also not be possible for the Financial Advisor and the Additional Secretary,Civil Supplies Department, to sign contracts as the Additional Secretary. In view of these circumstances the Home Department will have to amend the Government Resolution, referred to above so as to specifically include therein the Financial Advisor and the Additional Secretary, Civil Supplies Department.

Sd/-12-11

Remembrancer of Legal Affairs.

M.R.D.
17-7-56
C.4

U.R. to H.D. No.G-612,dated the 12thx Novehber 1952.

Office of the R.L.A.

Under clause 8 of the contract the intermediate payments made are to be regarded as advances against the final payment only and not as payments for work actually done and completed and such payment are not be considered as admission of the due performance of contract or any part thereof. Under clause 13 the contractor is bound to execute the whole and every part of the work in the most substantial and workmanlike manner and in strict accordance with the specifications both as regards materials and all other matters. From these provisions it appears clear that the contractor was entitled to full payment only on completion of the whole work. If any damage is caused to the works while in progress due to cyclone which should be considered as vis major, Government would not be liable to compensate the contractor on that account. It is expressly provided in clause 20 of the contract that if any damage shall be done to the work while it is in progress from any cause whatever, the contractor shall make good the same at his own expense. The damage referred in this clause need not necessarily be due to anything done by the servant or employee of the contractor. The words "any cause whatever" are wide enough to cover the damages which have occured in this case due to cyclone and Government are not bound to compensate the contractors to the extend of Rs.56,000/- i.e. the extent of damages caused by cyclone.

Sd/-
7-10
Remembrancer of Legal Affairs.

M.R.D.
17-8-56
C.4

U.R.to M.C., No.G-516,dated the 7th October 1952.

Office of the R.L.A.

In R.L.A.'s Opinion No.14016,dated the 5th December1949 it was held that Shri Manubhai was not entitled to receive from Government the commission earned by him as he had been guilty of misconduct in charging the buyers more than ½ percent as commission. The Presidency Magistrate's judgement discharging Shri Manubhai shows that there is absolutely no evidence to prove the alleged miscoudnct of Shri Manubhai. He also denies having taken any commission from the buyers. In view of this it would not be possible to withhold the commission which has become due to him under the terms of the agency as contained in the State Textile Controller's letter NO P.T.C./B.Y. dated the 17th October 1949 and it should be paid.

Sd/-
26-11

Remembrancer of Legal Affairs.

M.R.D.
17-2-56
C.4

U.R. to S.T.C.,No.G-646,dated the 26th November 1952.